

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 26 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX, Baroda

Versus

JAWAHARBHAI D PATEL

Appearance:

MR. P.K. JANI, instructed by MR MANISH R BHATT for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 06/12/96

ORAL JUDGEMENT(Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad
Bench "B" has referred to the High Court the following
three questions for opinion under Section 27 of the
Wealth Tax Act, 1957.

1. "Whether, on the facts and in the circumstances of the case, the Tribunal by placing reliance on Asstt. order for 1975-76 to 1977-78 was right in law in coming to the conclusion that the land situated at villages Harni, Sawad, and Baroda Kasba were agricultural lands through mistake the nomenclature of land was mentioned as agricultural by W.T.O without giving any findings to that effect?"
2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to exemption under Section 5(1)(iva) of the Wealth Tax Act, 1957?"
3. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the valuation of the lands at Rs. 10,50,000/- taken by the Wealth Tax Officer and confirmed by A.A.C for determining the 1/7th share of the assessee in the said land was not proper?"

The matter pertains to assessment years 1970-71 to 1974-75. The assessee in his wealth tax returns for the relevant years filed as an individual had showed that he had 1/7th share alongwith his wife and 5 sons who were the co-sharers in the immoveable property being lands situated in Harni, Sawad and Baroda Kasba. The assessee had got the land valued by his valuer. The Wealth Tax Officer while making the assessment for the said assessment years had referred the matter to the Departmental Valuation Officer (Lands and Buildings). The WTO accepted the valuation made by the Departmental Valuation Officer and assessed the share of the assessee in the said property accordingly.

The Appellate Assistant Commissioner of Wealth Tax before whom the orders of the WTO were challenged, while dealing with the contention of the assessee that the property was mainly agricultural land and its valuation should be done by one who is an expert in valuing agricultural land, held that the land in question was surrounded by housing societies and abutted on the Harni Road connecting the city with the Airport and that the area was included in the Town Planning Scheme of the Baroda Municipal Corporation. Considering all the relevant aspects the Commissioner was of the view that the land should be treated primarily as non-agricultural land and therefore, the Wealth Tax Officer had correctly

considered it as a non-agricultural land for the purpose of valuation. The valuation of the property was taken as Rs. 10,50,000/for the year 1970-71 and a uniform increase of price at the rate of 70,000/- for each subsequent assessment year was adopted and the Wealth Tax Officer was directed to recast his order on the basis of the said valuation, for the assessment year 1970-71 to 1974-75.

Against the Commissioner's order the assessee approached the Tribunal contending that the lands in question were agricultural land and that this was borne out from the fact that they were treated as agricultural land for the subsequent assessment years 1975-76 to 1977-78. The Tribunal held that the lands in question should be treated as agricultural lands in the years under appeal unless the claim of the assessee was rebutted by showing that the order of the Wealth Tax Officer for the subsequent years 1975-76 to 1977-78 was challenged and set aside by the higher authorities. The Tribunal held that since the order of the Wealth Tax Officer in respect of the subsequent years was not set aside, it was required to be held that the lands in question were agricultural lands. On the basis of this finding the Tribunal held that the lands were entitled to exemption under Section 5(1)(iva) of the Act as claimed by the assessee. Since according to the Tribunal the lands in question were agricultural lands and were thus, entitled to exemption, a direction was given to the Commissioner to ascertain the value of the land taking it to be as agricultural land and decide the question afresh after hearing both the sides.

Section 5 of the said Act provides for exemption in respect of certain assets. As per clause (iv a) of Section 5(1) as it operated at the relevant time, agricultural land belonging to the assessee subject to a maximum of Rs. 1,50,000/- in value were to be exempted. The Tribunal has found that the said lands were agricultural lands and therefore, the authorities had erred in denying exemption in respect thereof under Section 5(1)(iv a) as it operated at the relevant time.

The expression "agricultural land" has not been defined under the Act. If the land is used for agricultural purposes, ordinarily it would be correct to say that the land is agricultural land and if it is not to be put to such use, it would be a non-agricultural land. However, this test may not always be a correct guide for, there may be cases where land which is admittedly non-agricultural, may be temporarily used for

agricultural purpose. Whether a particular land is agricultural land or not would depend on the general nature or character of the land and various other factors. These factors would include the development and use of land in the adjoining areas, meaning thereby its situation, the physical characteristics of the land to show whether it is capable of being put to agricultural use, the actual user over a period of time, and the intention of the owner in regard to the user of the land. If the lands are included in the town planning scheme one could reasonably assume that they were not agricultural lands. The fact that the plots were assessed for the agricultural purpose and the assessee has not made any application for permission to make non-agricultural use of the plot would not be a factor which would out way the other factors. This position is borne out from the decision of a Division Bench of this Court, in context of the provisions of Section 2(e)(i) of the said Act, in *Rasiklal Chimanlal Nagri V. Commissioner of Wealth Tax, Gujarat* (1965) 56 ITR 608.

The Appellate Assistant Commissioner while considering the question has referred to the relevant factors. He has recorded that on personal inspection he had found that only a part of the land was under cultivation and that from the total area of 16.22 acres, the area under cultivation was not more than 1 acre. He has also noted that the area excepting the portion where agricultural operations were carried out was at the level of the main road with no water supply for cultivation purposes. He noted that the area was surrounded by housing societies and the land abutted on the Harni road connecting the city with the Airport, and further that the area was covered under the Town Planning Scheme of the Baroda Municipal Corporation. On the basis of these factors, he opined that the land should be treated primarily as non-agricultural land. The Tribunal without going into these relevant aspects, merely on the basis of the orders of the Wealth Tax Officer for the subsequent years which were not challenged, drew an inference that these lands were agricultural lands for the purpose of the relevant assessment years and therefore, they were required to be exempted. In view of the material which was on record before the Tribunal, as reflected in the order of the Commissioner, the Tribunal committed an error in assuming that there was only a mistake in describing the land as agricultural land, committed by the WTO. The Tribunal ought to have gone into the relevant factors with a view to ascertain whether the land in question was agricultural and for the purpose of deciding whether it should have been exempted and having

come to an appropriate finding on that aspect, it ought to have then considered the proper method of valuing the land depending upon its nature. In this view of the matter, we hold that the Tribunal was not right in placing reliance on the assessment orders for the year 1975-76 to 1977-78 in coming to the conclusion that the lands in question were agricultural lands solely on the basis that there was only a mistake in the nomenclature of land committed by the WTO. The question No.1 is therefore answered in the negative accordingly in favour of the Revenue. The Tribunal will have to consider the extent of exemption if any to which the assessee may be eligible under Sec. 5(1)(iv a) of the Act and valuation of the lands and assessment in respect of the share of the assessee will have to be determined on that basis. We therefore, do not answer question Nos. 2 and 3 leaving it open to the Tribunal to take a fresh decision on these questions in light of this judgement. The reference stands disposed of accordingly with no order as to costs.
